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March 14, 1997

By Hand

Elizabeth Lyle
Legal Advisor, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 92-297
CellularVision Request for Commission *Erratum* to Clarify *LMDS Second Report and Order*

Dear Elizabeth:

As you suggested in our conversation yesterday, on behalf of CellularVision of New York, L.P. ("CellularVision"), we request that the Commission promptly issue an *Erratum* clarifying two issues discussed in the *LMDS Second Report and Order* pertaining to the renewal of CellularVision's existing NYPMSA commercial license and the unrelated issue of the pioneer's preference award that was twice tentatively granted to CellularVision in 1993 and 1995.

Specifically, paragraph 135 of the *Second Report and Order* implies that the New York BTA is being excluded from auctions because CellularVision's "pioneer's preference is subject to a peer review process . . . and issues concerning its license are pending the outcome of review." [1] This statement, if not corrected, unfortunately creates the invalid impression that CellularVision's access to the NYPMSA portion of the NYBTA will be dependant upon the Commission's final action on CellularVision's pioneer's preference request. However, as you know and as correctly indicated in footnote 7 of the *Second Report and Order*, the Commission will commence processing CellularVision's pending renewal application for its commercial license for the NYPMSA before April 13, 1997. Moreover, the Commission already noted in its

[1] Paragraph 310 of the *Second Report and Order* also incorrectly summarizes this issue.

Third NPRM in this proceeding that "[t]he pioneer's preference, *covering the portion of the BTA lying outside the PMSA*, would be for the portion of the 28 GHz band proposed to be available for LMDS ... (or whatever band plan is ultimately adopted)." *LMDS Third NPRM*, paragraph 70 (*emphasis added*) (attached, Tab 1). Accordingly, CellularVision requests that the Commission issue an Erratum that, in part, would clarify paragraph 135 by cross-referencing footnote 7 and clearly recognize that CellularVision's NYPMSA commercial license is not subject to CellularVision's pioneer's preference request.[2]

Secondly, contrary to the clear statutory language of GATT and the Commission's own determinations, both in its generic pioneer's preference rulemaking and the LMDS proceeding,[3] CellularVision's pioneer's preference request which was filed on September 23, 1991 is not subject to "peer review."[4] Pursuant to GATT, Section 309(j)(13)(D)(iv) of the Communications Act exempts pioneer's preference applications filed before September 1, 1994 from the Commission's peer review process (attached, Tab 3). Moreover, the Commission has already recognized Congress' clear intent to exempt those pioneer's preference applications filed before September 1, 1994 from peer review, while subjecting all licenses issued after August 1, 1994 to GATT's discounted payment plan.[5] Accordingly, the Commission should clarify that peer review under Section 1.402 of the Commission's rules is inapplicable to CellularVision's pioneer's preference application, which has twice received tentative grants from the Commission and is the sole remaining application filed

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[2] In addition, paragraph 23 incorrectly states that CellularVision "initiated LMDS under the Pioneer's Preference authorized in the *First NPRM*." CellularVision "initiated" LMDS pursuant to the Commission's 1991 Hye Crest authorization. *See* 6 FCC Rcd 332 (1991).

[3] *See In the Matter of Review of the Pioneer's Preference Rules, Third Report and Order*, 10 FCC Rcd 13183, para. 24 (1995) (correcting the Commission's previous erroneous interpretation and specifically referencing the LMDS proceeding) (attached, Tab 2); *see also LMDS Third NPRM*, para 70, fn. 76 ("when we adopted amendments to our pioneer's preference evaluation criteria in 1994, we explicitly held that they would not apply to proceedings in which tentative decisions had been issued, such as this one.")

[4] *See LMDS Second Report and Order*, paragraphs 3, 442 (deferring action on CellularVision's tentative pioneer's preference and instructing OET to select a peer review group).

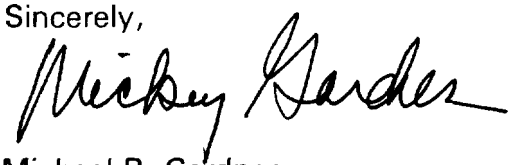
[5] *See supra*, note 3.

before the September 1, 1994 cut-off date.

As far as CellularVision twice-awarded tentative pioneer's preference grants, we believe that the Commission must resolve this issue well before the commencement of LMDS auctions. Accordingly, we would expect that the Commission's Erratum will confirm the Commission's intent to address this issue in the near term, particularly now that it is clear based on the above discussion and the enclosures that "peer review" is not appropriate for CellularVision's tentative pioneer's preference award.

We appreciate your prompt attention in clarifying this matter in a formal *Erratum*.

Sincerely,



Michael R. Gardner
William J. Gildea III
Counsel for CellularVision of New York, L.P.

Enclosures

cc William F. Caton, Acting Secretary, FCC

FCC 95-287

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	)	CC Docket No. 92-297
and	)	
Suite 12 Group Petition for Pioneer's Preference	)	PP-22

THIRD NOTICE OF PROPOSED RULEMAKING AND SUPPLEMENTAL TENTATIVE DECISION

Adopted: July 13, 1995 Released: July 28, 1995

Comment Date: August 28, 1995
Reply Comment Date: September 18, 1995

By the Commission:

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Paragraph

I. Introduction 1

from the service for which it requested a pioneer's preference in Los Angeles. The Commission disagreed, however, and determined not to award a pioneer's preference for LMDS in more than one service area. Accordingly, the Commission stated that if a pioneer's preference to CellularVision were to be awarded, that it would "modify the authorization to [CellularVision] to meet the service area, frequency, and other technical rules developed in this proceeding for the area encompassing [CellularVision's] New York PMSA authorization."[73] However, the Commission further stated that if CellularVision were to inform the Commission that it prefers Los Angeles, and if it were to surrender its New York license, the Commission would grant its pioneer's preference for Los Angeles.[74]

69. CellularVision filed comments to the *Tentative Decision* in which it argued that it was entitled to a pioneer's preference in the Los Angeles area without its affiliate Hye Crest being forced to surrender its New York license. Specifically, CellularVision argued that: a) Hye Crest was licensed prior to the adoption of the pioneer's preference rules; b) the proposed 28 GHz service rules are an outgrowth of the work commenced by CellularVision after Hye Crest was authorized and the pioneer's preference rules were adopted; and, c) the service provided by Hye Crest is different than the service for which CellularVision seeks a pioneer's preference.

70. A number of parties supported CellularVision's pioneer's preference arguments in comments and reply comments to the Tentative Decision. However, we note that all of these filings were made prior to the Commission being granted competitive bidding authority by Congress in August 1993.[75] Due to the fact such authority has drastically altered the pioneer's preference rules by requiring payment from pioneers, and due to the unique circumstances discussed below, we find no further need to consider whether CellularVision is entitled to a preference in Los Angeles. Rather, we propose to change our earlier tentative decision, and grant CellularVision a preference for that portion of the New York BTA (or other geographic service area ultimately adopted) which includes the New York PMSA. The pioneer's preference, covering the portion of the BTA lying outside the PMSA, would be for the portion of the 28 GHz band proposed to be available for LMDS in the Commission's band splitting plan, *infra*, *i.e.*, 27.5 - 28.35 GHz and 29.1 - 29.25 GHz (or whatever band plan is ultimately adopted by the Commission). We seek comment on these proposals. We note that if a pioneer's preference is awarded for the remainder of the BTA, Section 309(j)(13)(B) of the Communications Act, requiring an 85 percent payment of the value of the pioneer's preference license, would apply only to the portion of the New York BTA not covered by CellularVision's existing license for the PMSA. We seek comment on this tentative conclusion. We also clarify that the rules governing our evaluation of CellularVision's

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[73] *First NPRM*, *supra*, at para. 64.

[74] *First NPRM*, *supra*, 8 FCC Rcd at 566, paras. 63-65.

[75] *See Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 387, enacted August 10, 1993.

pioneer's preference request are those that were in effect when the Tentative Decision was adopted.[76]

71. Since our tentative decision on its pioneer's preference request in the *First NPRM*, CellularVision has begun serving a significant number of customers within its New York license area. Therefore, we do not believe it is in the public interest for us to continue proposing, in the context of a pioneer's preference award, that CellularVision voluntarily discontinue service in New York and turn in its license. Moreover, we believe that CellularVision has made a commitment to providing service in New York, as evidenced by the fact that it has applied for additional cell sites to cover the remainder of the PMSA. We have held that the choice of which geographic area to be awarded as the pioneer's preference license will be the licensee's.[77] CellularVision's circumstances are unique, however, in that the original license was granted before we established an LMDS service category and adopted regulations to govern the service. Further, the license was granted pursuant to waiver, prior to our adoption of the pioneer's preference rules, and for reasons that are consistent with the underlying objectives of those rules.[78] These unique circumstances, in our view, warrant our tentative decision to waive our rules on our own motion to the extent they would afford CellularVision the opportunity to choose the geographic area to be awarded as the pioneer's preference license. We seek comment on this proposed approach. We also note, of course, that CellularVision would have the opportunity (as would any interested party) to participate in any competitive bidding procedures we may establish in this proceeding for purposes of licensing LMDS service in the Los Angeles area.

72. It is our intention to accommodate CellularVision's operations within the New York PMSA to the maximum extent possible, while minimizing adverse effects of its

[76] When we adopted amendments to our pioneer's preference evaluation criteria in 1994, we explicitly held that they would not apply to proceedings in which tentative decisions had been issued, such as this one, see *In the Matter of Review of the Pioneer's Preference Rules*, First Report and Order, 9 FCC Rcd 605, para. 9 (1994).

[77] *Report and Order*, GEN Docket No. 90-217, 6 FCC Rcd 3488, 3495, paras. 53-54, *recon. denied*, 7 FCC Rcd 1808, 1802, paras. 28-29.

[78] A pioneer's preference was intended to ensure that innovators have an opportunity to participate in new services that they take a lead in developing. In addition, pioneer's preferences were intended to speed the development of new services and improve existing services. *In the Matter of Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, 6 FCC Rcd 3488 (1991). In *Hye Crest, supra*, the Commission found that granting CellularVision's waiver application was the most efficient and expeditious means for accommodating Section 7 of the Communications Act of 1934, as amended, 47 U.S.C. § 157, which charges the Commission to "encourage the provision of new technologies." Further, the Commission found that public benefits such as increased competition and greater diversity would be realized for the video marketplace, *Hye Crest Management, Inc., supra*, paras. 18, 24, thus speeding the development of new services and improving existing services through competition.

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 93-266

In the Matter of

Review of the Pioneer's
Preference Rules

THIRD REPORT AND ORDER

Adopted: June 6, 1995; **Released: June 8, 1995**

By the Commission:

I. INTRODUCTION

1. This *Third Report and Order (Third R&O)* addresses proposals set forth in the *Further Notice of Proposed Rule Making (Further Notice)*[1] in this proceeding and modifies certain rules regarding our pioneer's preference program pursuant to recent legislation. The pioneer's preference program provides preferential treatment in our licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service.

II. BACKGROUND

2. The *Further Notice* proposed rules in response to the pioneer's preference directives contained in the legislation implementing domestically the General Agreement on Tariffs and Trade (GATT),[2] as well as on our own motion. The GATT legislation requires any licenses awarded pursuant to our pioneer's preference program in services in which competitive bidding is used to pay 85 percent of the average price paid for comparable licenses.[3] This payment may be made in a lump sum or in installment payments over a period of not more than five years.[4] The GATT legislation, including the payment requirement, applies to any license issued on or after August 1, 1994 pursuant to a pioneer's preference award.[5]

3. The legislation also directs the Commission to prescribe regulations specifying the procedures and criteria to "evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service."[6] The legislation requires the pioneer's preference regulations to include: 1) procedures and criteria by which the significance of a pioneering contribution will be determined, after an opportunity for review and verification by experts not employed by the Commission; and 2) such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses.[7] The regulations issued pursuant to this legislation must be prescribed not later than 6 months after enactment of the GATT legislation (*i.e.*, by June 8, 1995), shall apply to pioneer's preference applications accepted for filing after September 1, 1994,[8] and must cease to be effective on September 30, 1998, when the pioneer's preference program sunsets.[9]

4. In the *Further Notice*, we tentatively concluded that, with the exceptions of the two areas specifically addressed by the GATT legislation, the existing pioneer's preference rules , as modified by the *Second Report and Order*, comply with the GATT legislation's requirement to specify procedures and criteria by which to evaluate pioneer's preference applications. However, we solicited comment regarding any alternatives to any aspects of these rules that might better achieve the objectives of the GATT legislation.[10]

5. With respect to the two areas specifically set forth in the GATT legislation, we noted that the GATT legislation's directive that the Commission establish a procedure for review and verification by outside experts was contemplated as an optional measure by our current pioneer's preference policies, but that such "peer review" was not mandatory. We therefore proposed to formalize this policy pursuant to the GATT legislation to provide an opportunity for review of potentially pioneering proposals by experts in the radio sciences who are not Commission employees. We sought comment on whether such review by outside experts should be required in all cases or whether pioneer's preference applicants (or other interested parties) should be given only an opportunity for such review, which may be either accepted or declined by the applicants.[11] We tentatively concluded that we would establish a peer review process on a permanent basis. We therefore proposed to delegate to the Chief of the Office of Engineering and Technology ("Chief, OET") the authority to select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request. In addition, while we sought comment on two possible interpretations of Section 309(j)(13)(D)(i) of the GATT legislation, which concerns possible conflicts of interest of such experts, we proposed appointing experts who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service.

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[1] *See Second Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 93-266, 10 FCC Rcd 4523 (1995) (petition for reconsideration pending).
[2] Uruguay Round Agreements Act, Pub. L. No. 103-465, Title VIII, § 801, 108 Stat. 4809, 5050 (1994), to be codified at 47 U.S.C. § 309(j)(13) (GATT legislation).
[3] 47 C.F.R. § 309(j)(13)(B).
[4] *Id.* § 309(j)(13)(C).
[5] *Id.* § 309(j)(13)(G).
[6] *Id.* § 309(j)(13)(D).
[7] *Id.* § 309(j)(13)(D) (i), (ii).
[8] *Id.* § 309(j)(13)(D)(iii).
[9] *Id.* § 309(j)(13)(D)(v), (F).
[10] *Further Notice* at ¶ 38.
[11] *Id.* at ¶ 39.

20. With respect to determining which licenses are most reasonably comparable under the pioneer's preference payment provision, Section 309(j)(13)(B)(i), no commenter addressed whether we should adopt any standards for comparing licenses and for excluding anomalous licenses. As stated in the *Further Notice*, we believe that the determination as to which licenses are most reasonably comparable to a pioneer's preference license must necessarily be done on a case-by-case basis. Accordingly, we will incorporate into our rules the provisions of Section 309(j)(13)(B), including the statutory formulas for determining the average "per capita bid amount" and the payment amount, and apply these provisions in each case falling under the GATT legislation's payment requirement.

21. As proposed in the *Further Notice*, pioneer's preference awards will be limited to services that require a spectrum allocation. As we stated in the *Further Notice*: "Our experience with the pioneer's preference program convinces us that awarding preferences for enhancements of existing services where no new spectrum allocation is required is contrary to the public interest. Such a policy encourages developers of a technology that can be used in a variety of existing services to apply for a pioneer's preference in each of those services."[36] However, we note that an entity that develops a new technology that may be used in an existing service may be able to reap significant financial benefits by patenting that technology or by selling equipment that uses that technology.

22. We proposed to apply the rules adopted in response to the *Further Notice* to any pioneer's preference requests granted after adoption of these rules, regardless of when the requests were accepted for filing, except in proceedings in which tentative pioneer's preference decisions have been made.[37] We received no comments on this matter. We find that, pursuant to authority in Section 4(i), in conjunction with Sections 1, 303(r), 307, and 309 of the Communications Act, it is in the public interest and in furtherance of our pioneer's preference policy in an auction environment to apply the rules adopted herein to pending pioneer's preference proceedings that have not reached the tentative decision stage. We also continue to find it equitable to apply new rules to these proceedings.[38] While each of the parties in these proceedings applied for a pioneer's preference before competitive bidding was authorized and before the GATT legislation was enacted, none of these parties has been awarded even a tentative preference. Further, we do not believe that any of these parties had received the expectation of an award under existing pioneer's preference rules. Accordingly, parties with pending pioneer's preference applications on file with the Commission will have 30 days from the effective date of the rules adopted herein to amend their applications to bring them into conformance with the rules adopted herein and in the *Second Report and Order* in this proceeding. Failure to timely amend a pending pioneer's preference request will result in the dismissal of the request.

23. In the *Second Report and Order*, we stated that while the payment mechanism in the GATT legislation does not apply to pioneer's preference requests accepted for filing on or before September 1, 1994, nevertheless -- pursuant to Section 4(i) and other provisions of the Communications Act -- license charges would be imposed on any pioneer's preference license granted in proceedings in which no tentative decision had yet been made, even if the requests in such proceedings were accepted for filing on or before that date.[39] In addition, prior to enactment of the GATT legislation, we amended the rules (also pursuant to Section 4(i)) to impose charges on any pioneer's preference licenses granted as a result of the three pioneer's preference proceedings in which only tentative decisions had been made prior to the initiation of this pioneer's preference review rulemaking.[40]

24. The *Second Report and Order's* connection of the September 1, 1994 date and the effective date of the payment provisions in the GATT legislation was an incorrect reading of the statute. We now conclude, on further analysis, that the payment requirements in subsections 309(j)(13)(B), (C) and (E) of the Communications Act, which were enacted by the GATT legislation, apply to pioneer's preference requests relating to "any licenses issued on or after August 1, 1994,"[41] regardless of when the pioneer's preference requests were accepted for filing. The September 1, 1994 date applies only to the regulations required by subsection 309(j)(13)(D). Accordingly, we determine that, while the new regulations prescribed here (regarding criteria, peer review and unjust enrichment), pursuant to subsection 309(j)(13)(D), will not apply in the proceedings in which tentative decisions have been made, pursuant to the plain language of the GATT legislation's effective date provision, the payment provisions of the GATT legislation will apply to any and all licenses ultimately issued in the future resulting from a pioneer's preference, including any license based on a preference granted in CC Docket No. 92-297.

25. Finally, pursuant to the GATT legislation, we will terminate the pioneer's preference program on September 30, 1998.

IV. PROCEDURAL INFORMATION

A. *Regulatory Flexibility Act*

26. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on

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[36] *Further Notice* at ¶ 51.
[37] *Id.* at ¶ 52.
[38] *Id.* at ¶ ¶ 35-36.
[39] *Second Report and Order* at ¶ 20.
[40] *See Memorandum Opinion and Order on Remand, supra* n.26. Of these three pending proceedings, CC Docket No. 92-297 (28 GHz Local Multipoint Distribution Service proceeding) is the only one that has not yet been subject to a Commission Order granting or denying pioneer's preferences. In GEN Docket No. 90-314 (2 GHz broadband PCS proceeding), the Commission awarded pioneer's preferences and, in a separate licensing proceeding, granted conditional licenses pursuant to the GATT legislation. *See Third Report and Order*, 9 FCC Rcd 1337 (1994), *modified*, Memorandum Opinion and Order on Remand; *see also Memorandum Opinion and Order*, 10 FCC Rcd 1101 (1995) (granting conditional licenses). In ET Docket No. 92-28 (above 1 GHz low-Earth orbit satellite proceeding), the Commission declined to award any pioneer's preferences. *See Second Report and Order*, 10 FCC Rcd 3406 (1995).
[41] 47 U.S.C. § 309(j)(13)(G).

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

To approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Uruguay Round Agreements Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE URUGUAY ROUND AGREEMENTS

Subtitle A—Approval of Agreements and Related Provisions

Sec. 101. Approval and entry into force of the Uruguay Round Agreements.
Sec. 102. Relationship of the agreements to United States law and State law.
Sec. 103. Implementing actions in anticipation of entry into force; regulations.

Subtitle B—Tariff Modifications

Sec. 111. Tariff modifications.
Sec. 112. Implementation of Schedule XX provisions on ship repairs.
Sec. 113. Liquidation or reliquidation and refund of duty paid on certain entries.
Sec. 114. Modifications to the HTS.
Sec. 115. Consultation and layover requirements for, and effective date of, proclaimed actions.
Sec. 116. Effective date.

Subtitle C—Uruguay Round Implementation and Dispute Settlement

Sec. 121. Definitions.
Sec. 122. Implementation of Uruguay Round Agreements.
Sec. 123. Dispute settlement panels and procedures.
Sec. 124. Annual report on the WTO.
Sec. 125. Review of participation in the WTO.
Sec. 126. Increased transparency.
Sec. 127. Access to the WTO dispute settlement process.
Sec. 128. Advisory committee participation.
Sec. 129. Administrative action following WTO panel reports.
Sec. 130. Effective date.

Subtitle D—Related Provisions

Sec. 131. Working party on worker rights.
Sec. 132. Implementation of rules of origin work program.
Sec. 133. Membership in WTO of boycotting countries.
Sec. 134. Africa trade and development policy.
Sec. 135. Objectives for extended negotiations.
Sec. 136. Repeal of tax on imported perfumes; drawback of tax on distilled spirits used in perfume manufacture.
Sec. 137. Certain nonrubber footwear.
Sec. 138. Effective date.

(b) DISTRESS TERMINATION CRITERIA FOR BANKING INSTITUTIONS.—

(1) CLARIFICATION OF DISTRESS CRITERION.—Subclause (I) of section 4041(c)(2)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)(B)(i)) is amended by inserting after "under any similar" the following: "Federal law or".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall be effective as if included in the Single-Employer Pension Plan Amendments Act of 1986.

PART III—EFFECTIVE DATES

SEC. 781. EFFECTIVE DATES.

Except as otherwise provided in this subtitle, the amendments made by this subtitle shall be effective on the date of enactment of this Act.

TITLE VIII—PIONEER PREFERENCES

SEC. 801. PIONEER PREFERENCES.

Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by adding at the end the following new paragraph:

"(13) RECOVERY OF VALUE OF PUBLIC SPECTRUM IN CONNECTION WITH PIONEER PREFERENCES.—

"(A) IN GENERAL.—Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

"(B) RECOVERY OF VALUE.—The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

"(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

"(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

"(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

"(iv) reducing such average amount by 15 percent; and

"(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

"(C) INSTALLMENTS PERMITTED.—The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

"(D) RULEMAKING ON PIONEER PREFERENCES.—Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

"(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

"(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

"(iii) be prescribed not later than 6 months after the date of enactment of this paragraph;

"(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

"(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

"(E) IMPLEMENTATION WITH RESPECT TO PENDING APPLICATIONS.—In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90–314 (FCC 93–550, released February 3, 1994)—

"(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following the date of enactment of this paragraph, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

"(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

"(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets

(ranked by population) in which no applicant has obtained preferential treatment;

"(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

"(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

"(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

"(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than $400,000,000, and if such amount is less than $400,000,000, the Commission shall recover an amount equal to $400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee.

The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

"(F) EXPIRATION.—The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998.

"(G) EFFECTIVE DATE.—This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure

that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.